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WILLIAM P. THOMPSON, JR., CLERK

IN THE  
**SUPREME COURT OF THE UNITED STATES**

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October Term, 1978

No. 78-91

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R. W. JONES, SR., et al., *Petitioners*

*v.*

CHARLES T. WOLF, et al., *Respondents*

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On Writ of Certiorari to the Supreme Court of Georgia.

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**Brief of *Amicus Curiae*, William P. Thompson, Stated Clerk  
of the General Assembly of The United Presbyterian  
Church in the United States of America, in which  
officers of 8 other denominations join.\*  
(See inside front cover)**

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## THE STATUS OF AMICUS CURIAE

William P. Thompson, the *amicus curiae* who files this brief, is the Stated Clerk of The United Presbyterian Church in the United States of America ("UPCUSA"); as Stated Clerk, he is the chief executive officer of the General Assembly of the UPCUSA.

The General Assembly of the UPCUSA is the supreme governing body of a Church which, as of December 31, 1977, consisted of 2,569,437 members and 13,904 ordained ministers organized in 8,675 particular churches through-

out the United States. Each particular church is governed by its elected representatives who constitute its governing board known as the Session. The particular churches in a geographical area are organized in and subject to the authority of a higher governing body called the Presbytery. The churches and presbyteries of a larger geographical area are organized in and subject to a superior governing body called the Synod. The churches, presbyteries and synods and the entire membership of the UPCUSA are under and subject to the authority of a supreme governing body known as the General Assembly.

*Amicus curiae* considers the issue presented by this case to be important to his Church and to all other churches in this country adhering to the principle of unity of government. Such churches adhering to the principle of unity of government, including the denomination directly involved in the instant case, are commonly referred to in the recent judicial opinions and legal literature as "hierarchical churches." *Amicus curiae* believes the decision of the Supreme Court of Georgia in the instant case offends the Constitution of the United States as interpreted by the decisions of this Court, and hence the decision of the Georgia court should be reversed.

### JOINDERS IN THIS BRIEF

*Amicus curiae* has written requests of the following officers of denominations that they join in this brief and their joinder is hereby indicated:

James R. Crumley, Jr., President of The Lutheran Church in America.

The Rt. Rev. Bishop Dezso Abraham, of The Hungarian Reformed Church in America.

Metropolitan Philip, Primate of the Antiochian Orthodox Christian Archdiocese of North America.

His Eminence Archbishop Iakovos, the Primate and President of the Greek Orthodox Archdiocese of North and South America.

Charles E. Edwards, Chairman of the Ecclesiastical Commission on Judiciary Affairs for the General Synod of the Associate Reformed Presbyterian Church.

T. V. Warnick, Stated Clerk of the General Assembly and Executive Secretary of the Executive Committee of the Cumberland Presbyterian Church.

Rev. Arie R. Brouwer, General Secretary of The Reformed Church in America.

Archpriest Daniel Hubiak, as Chancellor of The Orthodox Church in America.

### THE OPINION BELOW

The opinion of the Supreme Court of Georgia is printed in the Appendix to the Petition at page 11a, and is reported in 241 Ga. 208, 243 S.E. 2d 860.



### QUESTIONS PRESENTED

1. Do the First and Fourteenth Amendments, as interpreted by this Court in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976), require civil courts to defer to the decision of the church court of a hierarchical church on an issue of which of two competing factions is the true congregation and who are the members of a particular church congregation in that hierarchical church?

2. Do the First and Fourteenth Amendments require that the protection of the law be applied equally among hierarchical churches, whether such churches' hierarchical form is episcopal as in *Serbian, Keldroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952), and *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190 (1960), or presbyterian as in *Watson v. Jones*, 80 U.S. [13 Wall.] 679 (1872), and the presbyterian form of the church in the instant case?

### CONSTITUTIONAL PROVISIONS INVOLVED

#### U.S. Const., Amend. I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . .

#### U.S. Const., Amend. XIV, Sec. 1:

" . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

### STATEMENT OF THE CASE

The issue before the Georgia courts was who constituted the members of the congregation of the particular presbyterian church in this case, the Vineland Presbyterian Church in Macon, Georgia. The facts appear not to be in dispute, as the evidence at trial consisted of a Stipulation of Facts and incorporated exhibits agreed to by the parties.

The Vineland Presbyterian Church was organized as a particular church in the Presbytery of Augusta-Macon of the Presbyterian Church in the United States (hereinafter "PCUS"), one of the denominations which are sometimes called "connectional" or "hierarchical" and which are governed by a form of government contained in the "Book of Church Order."

On May 27, 1972, the congregation of the Vineland Presbyterian Church met and voted on a resolution proposed by the defendants purporting to withdraw the church from the PCUS. 165 persons voted for the resolution and 94 voted against it. The defendants (proponents of the resolution) later purported to strike the plaintiffs (the opponents of the resolution) from the membership rolls of the church. Shortly after the 1972 vote, the defendants proceeded, without the consent of the Presbytery of Augusta-Macon of the PCUS, to join a different organization which has no connection with the PCUS.

The Presbytery of Augusta-Macon of the PCUS appointed an Administrative Commission pursuant to Chapter 19, secs. 2-3 of the Form of Government of the PCUS. After proceedings taken by the Administrative Commission pursuant to the Book of Church Order, that commission determined that those members of the Vineland Church who had not renounced their affiliation of membership in the PCUS constituted the true congregation of the church. This group of loyal members include petitioners and the class they represent. These loyal members have been deprived both of their membership in the church and of their use of the property of the Vineland Presbyterian Church by the respondents and the class they represent.

## ARGUMENT

### I. The Decision of the Georgia Court Is Contrary to the Requirement of the First Amendment.

The Georgia Court refused to recognize the authority of the Presbyterian Church in the United States, as exercised under its Form of Government, in respect of the membership of the Vineland Presbyterian Church. That authority was exercised by the Presbytery of Augusta-Macon, a judiciary of the PCUS through its administrative commission appointed in accordance with the Book of Church Order. The PCUS thus determined who are the members of the Vineland Presbyterian Church, and hence who are the congregation of that church privileged to use the church property in the furtherance of the purposes of the PCUS.

It is not disputed that the Vineland Presbyterian Church was organized by the Presbytery of Augusta-Macon of the PCUS, and that the Vineland church was and continued to be an integral part of the PCUS up to the time of the 1972 vote. It is similarly undisputed that the Vineland church and all of its members had been subject to the Constitution and Form of Government of the PCUS from the date of the organization of the Vineland church in 1917 up to the time of the 1972 vote. Part of that Form of Government of the PCUS is the authority of the Presbytery, especially with respect to the particular churches within its jurisdiction. See Stipulation of Facts (Exhibit "U" in the record) and Book of Church Order, Chapter 16, The Presbytery in the Form of Government (Exhibit "A" in the record).

Another important aspect of the Government of PCUS as established in the Book of Church Order is set forth in Chapter 19, dealing with Committees and Commissions of Church Courts. "Church Courts" of the PCUS include the Presbytery. See Form of Government, Chapter 13, section 1. The power and jurisdiction of Church Courts is provided

in Chapter 14. In the exercise of the jurisdiction of the Presbytery, the Presbytery of Augusta-Macon—the Church Court having jurisdiction in this case—acted under the authority of Chapter 19, section 2 and 3 through its Commission, and determined that the plaintiffs and the class they represent constitute the true congregation of, and hence the members of, the Vineland church. See Stipulation of Facts, Exhibit "U" in the Record.

Accordingly, there was in this case an adjudication by the duly constituted Church Court of the issue of who are the members, and hence the true congregation of the Vineland Church, pursuant to the constitutional authority of PCUS as provided in its Form of Government, Exhibit "A". This adjudication is an ecclesiastical decision valid and required to be recognized, where material, by the civil courts. As stated in *Serbian* at page 724.

"In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them."

The Court said in *Serbian* at page 698, "The basic dispute is over control of the Serbian Eastern Orthodox Diocese for the United States of America and Canada (American-Canadian Diocese), its property and assets." So here, the basic dispute is over the control of the Vineland Presbyterian Church, its property and assets. As in *Serbian*, where the property rights and control followed the adjudication of the "Holy Assembly of Bishops" of the Serbian Orthodox Church with respect to the person—the Bishop—in office who should exercise authority of that office and,



hence, authority over property subject to that office, so here the Presbytery of the PCUS determined the true congregation of the Vineland Presbyterian Church and, hence, the authority over the property enjoyed by and used by that church in the furtherance of the purposes of the church and the PCUS.

## II. The Plaintiffs Are Entitled to Equal Protection of the Law.

Although the hierarchical form of the Churches involved in *Serbian*, *Kedroff* and *Kreshik* is episcopal, whereas the hierarchical form of the PCUS, the Church in the instant case, is presbyterian, the principle of constitutional law applicable to both species of churches is the same. The element of organization which causes hierarchical churches to differ from congregational churches, in the context of this discussion, is that hierarchical churches are founded on the principle of unity of government: *i.e.*, that the Church consists of a single organization, although composed of many parts, and that the parts are united and comprise the whole, which is subject to a hierarchical series of judicatory bodies.

The presbyterian hierarchical form—the form of the PCUS—is easily understood, as it has some similarity with our civil government, both being representative forms of government.

Although the decisions of the Church tribunals in the *Serbian*, *Kedroff* and *Kreshik* cases concerned the persons elected or appointed to hold a particular office, whereas the decision of the Church tribunal in the instant case concerned the persons who were members of the Vineland Presbyterian Church, the difference is not a difference in principle but merely reflects differences in detail between two different species of hierarchical churches.

While *Watson* did not speak expressly in constitutional terms, it recognized the right of religious organizations to

be accorded equality or equal protection under the law. This court said in *Watson*, 80 U.S. (13 Wall.) at page 714, "Religious organizations come before us in the same attitude as other voluntary associations for benevolent or charitable purposes, and their rights in property or of contract, are equally under the protection of the law, and the actions of their members subject to its restraints."

It could hardly be suggested that a Church is not to receive the equal protection of the law accorded to secular voluntary associations, merely because it is a Church. The freedom guaranteed by the First Amendment would seem to eliminate any such thought. Of equivalent importance, and controlling in the instant case, is that there should be no difference in the application of First and Fourteenth Amendment principles to the various Churches which have adopted the hierarchical form of government.

Applied to the instant case, the ecclesiastical authority which elected or appointed the Bishops with control of property in *Serbian*, *Kedroff* and *Kreshik* is no more valid than the ecclesiastical authority of the Presbytery which by its Administrative Commission determined the true members of the Vineland Presbyterian Church with control of its property.

## III. Title to Property Is Not at Issue.

The court below misconceived the issue in the first sentence of its opinion (Supreme Court of Georgia, see appendix page 11a of the Petition for Writ of Certiorari, and the report of the opinion in 243 S.E. 2d 860 at page 861), which states the issue as one involving a property title dispute. The court below failed to realize that the legal title to property would remain in the same title holding corporation regardless of the outcome of the case. The actual issue is "who are the members of the congregation of the Vineland Presbyterian Church".

The *Restatement of the Law of Trusts* 2d, par. 2, comment (d) correctly notes that "Title' unlike 'ownership' is a colorless word; to say without more that a person has title to certain property does not indicate whether he holds such property for his own benefit or as trustee." It is the beneficial interest, the interests of the true congregation and the religious uses—those consistent with the religious doctrines of the PCUS—that were at issue in the church judicatory and in the civil courts, and not where the legal title lies.

Nor is property for property's sake the issue. Property has importance, indeed its only significance to a Church, solely as an aid to church purposes. The freedom guaranteed by the First Amendment is not a sufficient protection of the right to pursue those purposes without the consistent application in all similar controversies involving hierarchical churches of the principles of *Watson*, *Kedroff*, *Kreshik* and *Serbian*, whether the form of government of such a church is episcopal or presbyterian.

## CONCLUSION

Wherefore, it is respectfully requested that this Court reverse the judgment of the Supreme Court of Georgia and direct the Supreme Court of Georgia to enter judgment in favor of the petitioners.

Respectfully submitted,

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